

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

THOMAS PETTY D/B/A TOM PETTY TRUCKING COMPANY §

Plaintiff §

v. § **CIVIL ACTION NO. 3:17-CV-2526**

GREAT WEST CASUALTY COMPANY §

Defendant. §

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Come now Defendant Great West Casualty Company (“Great West”) and files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 and L.R. 81.1, and would show this Court as follows:

**I.
BACKGROUND**

1. On or about September 5, 2017, Plaintiff filed this action by filing its Plaintiff’s Original Petition (“Original Petition”) in the 382nd Judicial District Court of Rockwall County, Texas, cause number 1-17-1014 (“State Court Action”). *See Exh. A., Doc. No. 2.*¹
2. Plaintiff alleges that this case arises out of an insurance policy issued by Great West and Plaintiff’s involvement as a truck driver and trucking company operator in two separate fatality accidents that were the fault of the other drivers involved and that as a result of those accidents Plaintiff sustained permanent mental injuries such that he can no longer operate his trucking company and lost his commercial driver’s license. *See Exh. A., Doc. No. 2.* As a result Plaintiff

¹ Exhibit A is an index of documents attached to this Notice of Removal. Defendants will cite to the documents attached to said index as “Exh. A, Doc. No. ____.”

alleges that he seeks to recover under all causes of action available to him for all forms of damages allowed by law. *See Exh. A.*, Doc. No. 2.

3. Attached to Plaintiff's Original Petition filed in the State Court Action (as page 21 of the document) is a document showing Plaintiff's claimed business income from his trucking business during the seven years preceding the 2016 year involved in the two accidents and it shows an average business income of \$82,000 per year. *See Exh. A.* Doc. No.2, p. 21.

4. Plaintiff filed a First Amended Petition in the State Court Action on September 7, 2017 consisting of only pages 1 and 3 of the actual petition, missing page 2, but attaching the same business income document referenced above. *See Exh. A.* Doc. No. 3, p. 20.

5. Defendants received the Original Petition by email from Plaintiff on September 5, 2017. This Notice of Removal is being filed on September 18, 2017.

II.
DIVERSITY JURISDICTION REMOVAL

A. Diversity

6. This Court has original jurisdiction under the provisions of 28 U.S.C. § 1332, because there is complete diversity of citizenship between Plaintiff Thomas Petty d/b/a Tom Petty Trucking Company, who is an individual resident and citizen of Collin County Texas, and Defendant Great West, which is a citizen of Nebraska (both state of incorporation and principal place of business).

7. Therefore, there is complete diversity because Plaintiff is a citizen of Texas and Defendant is a citizen of Nebraska.

B. Amount in Controversy

8. Plaintiff alleges that he is seeking "all forms of damages allowed by law" and his pleadings allege that his damages consist of permanent mental injuries and loss of his trucking business, inability to operate a truck, and loss of his commercial driver license. Documents attached to his

Original Petition indicate that his business income in the years preceding 2016, i.e. the year involved in the two fatality accidents that are the subject of his claims, was approximately \$82,000 per year. *See Exh. A.*, Doc. No.2 p. 21; Doc. No. 3, p. 20. Additionally, by email dated September 16, 2017 and sent to Great West's Asst. Gen. Counsel, Plaintiff quantified his lost income damages being sought in this action as \$499,688.11. *See Exh. B.* Therefore, the amount in controversy appears to be in excess of \$500,000.

C. Removal Timely

9. Since Defendant received the Original Petition on September 5, 2017 when it was emailed (but not served) on Defendant, this Notice of Removal is timely filed within the thirty-day statutory time period for removal under 28 U.S.C. § 1446(b)(1).

D. Procedural Matters

10. Plaintiff did not request a jury in the State Court Action and, upon information and belief, did not pay the jury fee.

11. Pursuant to L.R. 81.1, Defendant attaches Exh. A as an index to this Notice containing all documents filed in the State Court Action prior to this removal consisting of only the two pleadings referenced above.. *See L.R. 81.1(a)(4).* The index further identifies each document and indicates the date the document was filed. *See L.R. 81.1(a)(4)(A).*

12. Contemporaneous to this filing, Defendants are filing a civil cover sheet, a supplemental civil cover sheet, and a separately signed Certificate of Interested Persons. *See L.R. 81.1(a)(1),(2); L.R. 81.1(a)(4)(D).*

13. As required by 28 U.S.C. § 1446(d), Defendants, the removing parties, will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of

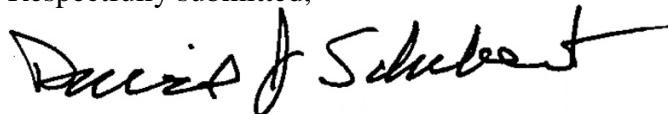
this Notice of Removal with the clerk of the 382^d Judicial District Court, Rockwall County, Texas, where the State Court Action is currently pending.

14. This case is being removed by Defendant in the interests of justice and not for the purpose of delay.

PRAYER

WHEREFORE, Defendant Great West Casualty Company respectfully request that the above-entitled State Court Action be removed from the 382d Judicial District of Rockwall County, Texas, to the United States District Court for the Northern District of Texas, Dallas Division.

Respectfully submitted,



David J. Schubert
State Bar No. 17820800
E-Mail: dschubert@schubertevans.com
Stephen Burnett
State Bar No. 24006931
E-Mail: sburnett@schubertevans.com

SCHUBERT & EVANS, P.C.
900 Jackson, Suite 630
Dallas, Texas 75202
Telephone: 214.744.4400
Facsimile: 214.744.4403

**ATTORNEYS FOR DEFENDANT GREAT
WEST CASUALTY COMPANY**

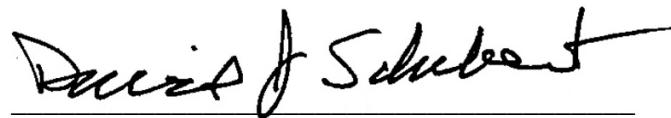
CERTIFICATE OF SERVICE

I certify that on the 18th of September, 2017, I electronically filed the foregoing document with the clerk of the Court for the United States District Court, Northern District of Texas, using the CM/ECF system. I certify that on the 18th day of September, 2017, I also sent the foregoing document by U.S. Mail Certified, Return Receipt Requested and e-mail.

VIA CMRRR AND EMAIL

Thomas Petty, Pro Se
278 County Road 911 Edwards
Royce City, Texas 75189

PLAINTIFF



David J. Schubert